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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/767,771	01/30/2004	Derek Bergin	100204673-1	5546

22879   7590   08/06/2007
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EXAMINER
PUENTE, EMERSON C

ART UNIT	PAPER NUMBER
2113	

MAIL DATE	DELIVERY MODE
08/06/2007	PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

	Application No.	Applicant(s)
Office Action Summary	10/767,771	BERGIN, DEREK
	Examiner	Art Unit	
	Emerson C. Puente	2113	

-- *The MAILING DATE of this communication appears on the cover sheet with the correspondence address* --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE <u>3</u> MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on <u>29 May 2007</u>.

2a)☒ This action is **FINAL**.　　2b)☐ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) <u>1-28</u> is/are pending in the application.

　　4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) <u>1-28</u> is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☒ The drawing(s) filed on <u>30 January 2004</u> is/are: a)☒ accepted or b)☐ objected to by the Examiner.

　　Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

　　Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

　　a)☐ All　b)☐ Some * c)☐ None of:

　　　1.☐ Certified copies of the priority documents have been received.

　　　2.☐ Certified copies of the priority documents have been received in Application No. _____.

　　　3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

　　* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1)☐ Notice of References Cited (PTO-892)

2)☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)

3)☐ Information Disclosure Statement(s) (PTO/SB/08)
　　Paper No(s)/Mail Date _____.

4)☐ Interview Summary (PTO-413)
　　Paper No(s)/Mail Date. _____.

5)☐ Notice of Informal Patent Application

6)☐ Other: _____.

DETAILED ACTION

This action is made **Final.**

Claims 1-28 have been examined.

Claim Rejections - 35 USC § 101

35 U.S.C. 101 reads as follows:

> Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.

Claims 22-28 are rejected under 35 U.S.C. 101 because the claimed invention is directed to non-statutory subject matter.

In regards to claim 22-28, the claimed "machine readable medium" as described in the specification page(s) 17-18 paragraph 67, includes, among other examples, propagated signals either with or without carrier waves, which is nonstatutory. As such, the claim is not limited to statutory subject matter and is therefore non-statutory. Examiner suggests amending "A machine readable medium ..." to "A machine readable **storage** medium ...".

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

> A person shall be entitled to a patent unless –
>
> (e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this

subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

Claims 1-4,6-11,13-17,20-25, 27, and 28 rejected under 35 U.S.C. 102(e) as being anticipated by US Patent Application Publication 2004/0255291 of Gupton et al. referred hereinafter "Gupton".

In regards to claim 1, Gupton discloses a method for testing software, the method comprising:

receiving a plurality of test-modules associated with an external system and organized into a sequence. Gupton discloses a sequence editor for creating a test executive sequence (see page 7 paragraph 108).

each test-module including at least one software-targeted testing-inquiry that generates a plurality of intermediate results, the test module returning a distilled result based upon the intermediate results. Gupton discloses skipping steps (distilled result) depending on the execution results of previous steps or intermediate results (see page 8 paragraph 114).

receiving one or more rules to which at least one of the test-modules in the sequence is subject, application of each rule having one or more outcomes, at least one outcome for each rule being the determination of the next test-module to be administered, each rule including one or more actions conditioned upon the distilled result returned by the corresponding test module, the one or more conditioned actions being configurable to be a branch out of the sequence to a predetermined test-module. Gupton discloses skipping steps depending on the execution results of previous steps (see page 8 paragraph 114).

administering the sequence of test-modules sequentially except where a branch is invoked to administer the sequence from another point in the sequence. Gupton disclose

executing a sequence, wherein a user can configure some steps to be skipped (see page 8

paragraph 114)

the administering of a current test-module including

executing the current test-module, the executing including sending signal bits to

the external system. Gupton discloses collecting the execution results of the steps (see page 8

paragraph 114).

applying, if the current test-module is subject to one or more rules, such one or

more rules. Gupton discloses skipping steps depending on the execution results of previous steps

(see page 8 paragraph 114).

In regards to claim 2, Gupton discloses the claim limitations as discussed above. Gupton

further discloses

receiving commands to arrange a portion of the plurality of test-modules to create the

sequence of test-modules. Gupton disclose a sequence editor may have a GUI for enabling a user

to efficiently create a test executive sequence (see page 7 paragraph 108).

receiving commands to associate at least one condition and at least one action to at least

one test-module of the sequence of test-modules. Gupton discloses a user may configure some

steps to be skipped depending on execution results of previous steps (see page 8 paragraph 114).

In regards to claim 3 and 4, Gupton discloses the claim limitations as discussed above.

Gupton further discloses wherein, the action is at least one of

sending a communication, wherein, the sending of a communication may be executed

using at least one of mailing, Emailing, paging, and phoning,

aborting,

skipping a test-module in the test-module sequence,

repeating a test-module,

branching, and

executing a program.

Gupton discloses skipping steps depending on the execution results of previous steps (see

page 8 paragraph 114), indicating skipping a test-module in the test-module sequence and

branching. Examiner notes since claim cites at least one, prior art needs only one of the features

to meet the claim limitations.

In regards to claim 6, Gupton discloses the claim limitations as discussed above. Gupton

further discloses associating a test-module identification value for each test-module in the

sequence, the test-module identification value corresponding to an order of the test-module

sequence. Gupton discloses creating a test executive sequence (see page 7 paragraph 108), and

further defines a sequence as a series of steps that the user specifies for execution in a particular

order (see page 1 paragraph 11). In order for a series of steps to execute in a particular order,

there must be a value associated with each step or test module identifying its order in the

sequence.

In regards to claim 7, Gupton discloses the claim limitations as discussed above. Gupton

further discloses wherein the distilled result is determined based on a synthesis of values of the

plurality of intermediate software-targeted testing-inquiry results. Gupton discloses skipping

steps (distilled result) depending on the execution results of previous steps or intermediate results

(see page 8 paragraph 114).

In regards to claim 8, Gupton discloses a system that tests software, the system comprising:

means for receiving a plurality of test-modules associated with an external system and organized into a sequence. Gupton discloses a sequence editor for creating a test executive sequence (see page 7 paragraph 108).

each test-module including at least a software-targeted testing-inquiry that generates a plurality of intermediate results, the test module returning a distilled result based upon the results. Gupton discloses skipping steps (distilled result) depending on the execution results of previous steps or intermediate results (see page 8 paragraph 114).

means for receiving one or more rules to which at least one of the test-modules in the sequence is subject, application of each rule having one or more outcomes, at least one outcome for each rule being the determination of the next test-module to be administered, each rule including one or more actions conditioned upon the distilled result returned by the corresponding test module, the one or more conditioned actions being configurable to be a branch out of the sequence to a predetermined test-module. Gupton discloses skipping steps depending on the execution results of previous steps (see page 8 paragraph 114).

means for administering the sequence of test-modules sequentially except where a branch is invoked to administer the sequence from another point in the sequence. Gupton disclose executing a sequence, wherein a user can configure some steps to be skipped (see page 8 paragraph 114).

the administering of a current test-module including

executing the current test-module, the executing including sending signal bits to

the external system. Gupton discloses collecting the execution results of the steps (see page 8

paragraph 114).

applying, if the current test-module is subject to one or more rules, such one or

more rules. Gupton discloses skipping steps depending on the execution results of previous steps

(see page 8 paragraph 114).

In regards to claim 9, Gupton discloses the claim limitations as discussed above. Gupton

further discloses

means for receiving commands to arrange a portion of the plurality of test-modules to

create the sequence of test-modules. Gupton disclose a sequence editor may have a GUI for

enabling a user to efficiently create a test executive sequence (see page 7 paragraph 108).

means for receiving commands to associate at least one condition and at least one action

to at least one test-module of the sequence of test-modules. Gupton discloses a user may

configure some steps to be skipped depending on execution results of previous steps (see page 8

paragraph 114).

In regards to claim 10 and 11, Gupton discloses the claim limitations as discussed above.

Gupton further discloses wherein, the action is at least one of

sending a communication, wherein the sending of a communication may be at least one

of mailing, Emailing, paging, and phoning,

aborting,

branching,

repeating a test,

executing a branch, and

executing a program.

Gupton discloses skipping steps depending on the execution results of previous steps (see page 8 paragraph 114), indicating skipping a test-module in the test-module sequence and branching. Examiner notes since claim cites at least one, prior art needs only one of the features to meet the claim limitations.

In regards to claim 13, Gupton discloses the claim limitations as discussed above. Gupton further discloses means for associating a test identification value for each of the test-modules of the sequence, the test identification value corresponding to the order of the test sequence. Gupton discloses creating a test executive sequence (see page 7 paragraph 108), and further defines a sequence as a series of steps that the user specifies for execution in a particular order (see page 1 paragraph 11). In order for a series of steps to execute in a particular order, there must be a value associated with each step or test module identifying its order in the sequence.

In regards to claim 14, Gupton discloses the claim limitations as discussed above. Gupton further discloses wherein the distilled result is determined based on a synthesis of values of the plurality of intermediate software-targeted testing-inquiry results. Gupton discloses skipping steps (distilled result) depending on the execution results of previous steps or intermediate results (see page 8 paragraph 114).

In regards to claim 15, Gupton discloses a system that tests software comprising:

a results database. Gupton discloses collecting the execution results of the steps (see page 8 paragraph 114).

a test engine configured to receive a plurality of test-modules associated with an external system and organized into a sequence. Gupton discloses a sequence editor for creating a test executive sequence (see page 7 paragraph 108).

each test-module including a software-targeted testing-inquiry that generates a plurality of intermediate results, the test module returning a distilled result based upon the results. Gupton discloses skipping steps (distilled result) depending on the execution results of previous steps or intermediate results (see page 8 paragraph 114).

the test engine further receiving one or more rules to which at least one of the test-modules in the sequence is subject, application of each rule having one or more outcomes, at least one outcome for each rule being the determination of the next test-module to be administered, each rule including one or more actions conditioned upon the distilled result returned by the corresponding test module, the one or more conditioned actions being configurable to be a branch out of the sequence to a predetermined test-module. Gupton discloses skipping steps depending on the execution results of previous steps (see page 8 paragraph 114).

the test engine further administering the sequence of test-modules sequentially except where a branch is invoked to administer the sequence from another point in the sequence. Gupton disclose executing a sequence, wherein a user can configure some steps to be skipped (see page 8 paragraph 114).

the administering of a current test-module including

executing the current test-module, the executing including sending signal bits to the external system. Gupton discloses collecting the execution results of the steps (see page 8 paragraph 114)

applying, if the current test-module is subject to one or more rules, such one or more rules. Gupton discloses skipping steps depending on the execution results of previous steps (see page 8 paragraph 114).

In regards to claim 16, Gupton discloses the claim limitations as discussed above. Gupton further discloses a test management system configured to

receive a plurality of test-modules, receive commands to arrange a portion of the plurality of test-modules to create the sequence of test-modules. Gupton disclose a sequence editor may have a GUI for enabling a user to efficiently create a test executive sequence (see page 7 paragraph 108).

receive commands to associate at least one condition and at least one action to at least one test-module of the sequence of test-modules. Gupton discloses a user may configure some steps to be skipped depending on execution results of previous steps (see page 8 paragraph 114).

In regards to claim 17, Gupton discloses discloses the claim limitations as discussed above. Gupton further discloses wherein, the action is at least one of sending a communication, aborting, skipping a test-module in the test-module sequence, repeating a test-module, executing a branch, and executing a program. Gupton discloses skipping steps depending on the execution results of previous steps (see page 8 paragraph 114), indicating skipping a test-module in the test-module sequence and branching. Examiner notes since claim cites at least one, prior art needs only one of the features to meet the claim limitations.

In regards to claim 20, Gupton discloses the claim limitations as discussed above. Gupton

further discloses an associating system that associates a test-module identification value for each

of the plurality of test-modules, the test-module identification value corresponding to the order of

the test-module sequence. Gupton discloses creating a test executive sequence (see page 7

paragraph 108), and further defines a sequence as a series of steps that the user specifies for

execution in a particular order (see page 1 paragraph 11). In order for a series of steps to execute

in a particular order, there must be a value associated with each step or test module identifying

its order in the sequence.

In regards to claim 21, Gupton discloses the claim limitations as discussed above. Gupton

further discloses wherein the distilled result is determined based on a synthesis of values of the

plurality of intermediate software-targeted testing-inquiry results. Gupton discloses skipping

steps (distilled result) depending on the execution results of previous steps or intermediate results

(see page 8 paragraph 114).

In regards to claim 22, Gupton discloses a machine readable medium including

instructions executed by a computer, the instructions comprising:

receiving a plurality of test-modules associated with an external system and organized

into a sequence. Gupton discloses a sequence editor for creating a test executive sequence (see

page 7 paragraph 108).

each test-module including at least a software-targeted testing-inquiry that generates a

plurality of intermediate results, the test module returning a distilled result based upon the

intermediate results. Gupton discloses skipping steps (distilled result) depending on the

execution results of previous steps or intermediate results (see page 8 paragraph 114).

receiving one or more rules to which at least one of the test-modules in the sequence is

subject, application of each rule having one or more outcomes, at least one outcome for each rule

being the determination of the next test-module to be administered, each rule including one or

more actions conditioned upon the distilled result returned by the corresponding test module, the

one or more conditioned actions being configurable to be a branch out of the sequence to a

predetermined test-module. Gupton discloses skipping steps depending on the execution results

of previous steps (see page 8 paragraph 114).

administering the sequence of test-modules sequentially except where a branch is

invoked to administer the sequence from another point in the sequence. Gupton disclose

executing a sequence, wherein a user can configure some steps to be skipped (see page 8

paragraph 114).

the administering of a current test-module including

executing the current test-module, the executing including sending signal bits to

the external system. Gupton discloses collecting the execution results of the steps (see page 8

paragraph 114).

applying, if the current test-module is subject to one or more rules, such one or

more rules. Gupton discloses skipping steps depending on the execution results of previous steps

(see page 8 paragraph 114).

In regards to claim 23, Gupton discloses the claim limitations as discussed above. Gupton

further discloses

receiving commands to arrange a portion of the plurality of test-modules to create the

sequence of test-modules. Gupton disclose a sequence editor may have a GUI for enabling a user

to efficiently create a test executive sequence (see page 7 paragraph 108).

receiving commands to associate at least one condition and at least one action to at least

one test-module of the sequence of test-modules. Gupton discloses a user may configure some

steps to be skipped depending on execution results of previous steps (see page 8 paragraph 114).

In regards to claim 24 and 25, Gupton discloses the claim limitations as discussed above.

Gupton further discloses wherein, the action is at least one of

sending a communication, wherein, the sending of a communication may be executed

using at least one of mailing, Emailing, paging, and phoning,

aborting,

skipping a test-module in the test-module sequence,

repeating a test-module,

executing a test-module out of sequence, and

executing a program.

Gupton discloses skipping steps depending on the execution results of previous steps (see

page 8 paragraph 114), indicating skipping a test-module in the test-module sequence and

branching. Examiner notes since claim cites at least one, prior art needs only one of the features

to meet the claim limitations.

In regards to claim 27, Gupton discloses the claim limitations as discussed above. Gupton

further discloses associating a test-module identification value for each test-module of the

sequence of test-module, the test-module identification value corresponding to the order of the

test-module sequence. Gupton discloses creating a test executive sequence (see page 7 paragraph 108), and further defines a sequence as a series of steps that the user specifies for execution in a particular order (see page 1 paragraph 11). In order for a series of steps to execute in a particular order, there must be a value associated with each step or test module identifying its order in the sequence.

In regards to claim 28, Gupton discloses the claim limitations as discussed above. Gupton further discloses wherein the distilled result is determined based on a synthesis of values of the plurality of intermediate software-targeted testing-inquiry results. Gupton discloses skipping steps (distilled result) depending on the execution results of previous steps or intermediate results (see page 8 paragraph 114).

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

Claim 5,12,19, and 26 are rejected under 35 U.S.C. 103(a) as being unpatentable over Gupton in view of US Patent No. 5,220,658 of Kerr et al. referred hereinafter "Kerr".

In regards to claims 5,12,19, and 26, Gupton discloses the claim limitations as discussed above.

However, Gupton fails to explicitly disclose

wherein, at least one of the test-modules is repeatedly administered until passing state information is returned.

Kerr discloses retesting or replaying steps to ensure the repair when an error is detected and corrected (see column 23 lines 40-45).

It would have been obvious to one of ordinary skill in the art at the time of the invention was made to combine the teachings of Gupton and Kerr to retest or replay steps to ensure the repair when an error is detected and corrected, thus indicating wherein, at least one of the test-modules is repeatedly administered until passing state information is returned. A person of ordinary skill in the art would have been motivated to combine the teachings because Gupton is concerned with detecting and correcting errors on a system (see page 1 paragraph 5 "pass/fail results" and page 28 paragraph 530 and 538) and retesting or replaying steps, as per teachings of Kerr, ensure the repair when an error is detected and corrected (see column 23 lines 40-45).

Claim 18 is rejected under 35 U.S.C. 103(a) as being unpatentable over Gupton in view of US Patent No. 6,988,139 of Jervis et al. referred hereinafter "Jervis".

In regards to claim 18, Gupton discloses the claim limitations as discussed above.

However, Gupton fails to explicitly disclose

wherein, the test management system sends at least one of an Email, page, and phone message.

Jervis discloses running test suites and email the results (see column 14 lines 38-42).

It would have been obvious to one of ordinary skill in the art at the time of the invention was made to combine the teachings of Gupton and Jarvis to email test results, thus indicating

wherein, the test management system sends an email. A person of ordinary skill in the art would

have been motivated to combine the teachings because Gupton is concerned to collecting

execution results (see page 8 paragraph 114) and emailing, as per teachings of Jervis, constitutes

a commonly known means to sent results, thus enabling the collection of the execution results.

Response to Arguments

Applicant's arguments filed 5/29/07 have been fully considered but they are not

persuasive.

In response to applicant's argument that the "Interim Guidelines for Examination of

Patent Applications for Patent Subject Matter Eligibility" (OG Notices 22 November 2005) is

just a proposal and "a *proposal* is not a law under 35 U.S.C., nor is it a Rule under 37 C.F.R.,

nor does the proposal itself cite any case law for a holding that propagated signals are non-

statutory," (see page 11-12 of Remarks) applicant must understand it is the current position of

the office that propagated signals constitute non-statutory subject matter as explained in the

Interim Guidelines. As such, it is the responsibility of the examiner to reject such claims. Unless

applicant can provide evidence to the contrary and/or the Guidelines for Examination of Patent

Applications for Patent Subject Matter Eligibility changes, the rejection must remain.

In response to applicant's argument "A distinction over the Gupton '291 PGPub of claim

1 is administering a sequence of test-modules, there being at least one rule of which at least one

of the test-modulesis the subject, each rule including one or more actions conditioned upon the

distilledresult returned by the corresponding test-module, wherein a given distilled result is based

upon intermediate results generated by at least one software-targeted inquiry included in a given test-module. While the Gupton '291 PGPub discloses that a step in a test executive sequence might be skipped based upon results of another step, the Gupton '291 PGPub discloses nothing regarding manipulation of the results of a step, much less distillation of intermediate results into a distilled result upon which a conditional action is evaluated," (see page 13-14 of Remarks) examiner respectfully disagrees.

Examiner notes the claim does not disclose "manipulation of the results of a step". The claim only cites among other things "returning a distilled result based upon the intermediate results". Gupton, likewise, discloses executing steps, and based on the results of these steps (immediate results), the test executive engine determines whether or not to skip steps in a sequence (distilled result) (see page 8 paragraph 114). The determination of whether or not to skip steps constitute as a "distilled result" as it is based upon previous or immediate results. If applicant intended the "distilled result" to have different meaning, examiner suggest applicant to amend claims to more clearly distinguish the difference. Argument is moot. Examiner maintains his rejection.

Conclusion

THIS ACTION IS MADE FINAL. Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after

the end of the THREE-MONTH shortened statutory period, then the shortened statutory period

will expire on the date the advisory action is mailed, and any extension fee pursuant to 37

CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event,

however, will the statutory period for reply expire later than SIX MONTHS from the mailing

date of this final action.

Any inquiry concerning this communication or earlier communications from the

examiner should be directed to Emerson C. Puente whose telephone number is (571) 272-3652.

The examiner can normally be reached on 8-5 M-F.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's

supervisor, Robert W. Beausoliel can be reached on (571) 272-3645. The fax phone number for

the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent

Application Information Retrieval (PAIR) system. Status information for published applications

may be obtained from either Private PAIR or Public PAIR. Status information for unpublished

applications is available through Private PAIR only. For more information about the PAIR

system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private PAIR

system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Emerson Puente

Emerson Puente
Examiner
AU 2113